TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 209.

YEE WON, PETITIONER,

vs.

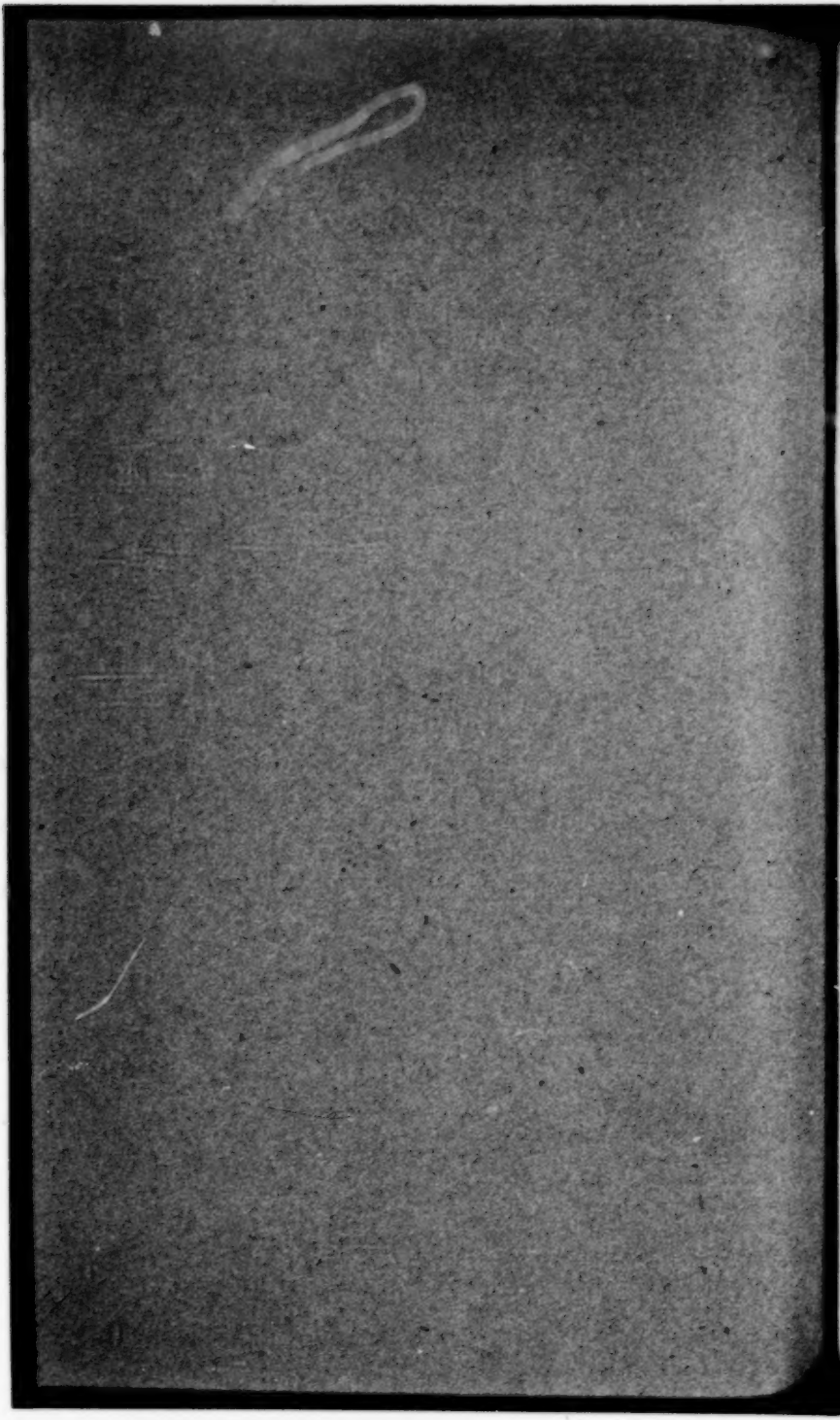
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 13, 1920.

CERTIORARI AND RETURN FILED NOVEMBER 6, 1922.

(27,389)



(27,389)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1920.

No. 3259

United States
Circuit Court of Appeals
For the Ninth Circuit.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

Names of Attorneys.

For Petitioner and Appellant:

JOHN L. McNAB, Esq., and JOSEPH P. FALLON, Esq., Both of San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Francisco, Calif.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY and YEE YUK HING, on Habeas Corpus.

Praecipe for Transcript on Appeal.

To the Clerk of said Court:

Sir: Please make up Transcript of Appeal in the above-entitled case, to be composed of the following papers, to wit:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer to petition.
4. Minute order regarding immigration record.
5. Judgment and order dismissing order to show cause and denying petition for writ.
6. Notice of appeal.
7. Petition for appeal.
8. Assignment of errors.

9. Order allowing appeal.

10. Stipulation and order regarding immigration record.

11. Clerk's certificate.

12. Citations on appeal—Original and copy.

JOHN L. McNAB,
JOSEPH P. FALLON,
Attorneys for Petitioner.

[Endorsed]: Filed Oct. 8, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. ——.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Petition for a Writ of Habeas Corpus.

To the Honorable, The Southern Division of the United States District Court, for the Northern District of California, First Division:

Petition of Yee Won respectfully shows:

I.

That your petitioner is a Chinese person and a regularly domiciled merchant residing in the United States.

II.

That Chin Shee, Yee Tuk Oy and Yee Yuk Hing,

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*Page number appearing at foot of page of original certified Transcript of Record.

the detained persons, on whose behalf this petition is made, are the wife, daughter and son respectively of your petitioner, and under the law entitled to enter the United States.

III.

That said Chin Shee, Yee Yuk Oy and Yee Yuk Hing are unlawfully imprisoned, detained, confined, and restrained of their liberty by Edward White, Commissioner of Immigration, at the port of San Francisco, at the Immigration Station of the United States, at Angel Island, or in some other place in the Northern District of California, and are about to be deported on a steamer, sailing from the port of San Fransisco, at 1 P. M. on the 19th day of January, 1918; that the first notice of said decision and order of deportation was received by your petitioner on the 17th day of January, 1918. **[2]**

IV.

That the illegality of such imprisonment, restraint and confinement consists in this, to wit:

That the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing made application to be admitted to the United States as members of the exempt class, and as the wife, son and daughter respectively of your petitioner; that subsequent to the said application to be so admitted to the United States, the said applicants were by the Secretary of Labor of the United States refused and denied a fair hearing in good faith, and were by the Secretary of Labor and the officials acting under him by a manifest abuse of the discretion committed to them by law, and against the letter and the spirit of the law, denied the right to enter the

United States, and in this behalf your petitioner alleges:

That the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing, during the month of July, 1917, arrived at the port of San Francisco from China and made application to the Commissioner of Immigration at the port of San Francisco, for admission to the United States, as the wife and minor children, respectively, of your petitioner; that your petitioner is a regularly domiciled Chinese merchant and a member of the exempt class, as so defined by the Chinese Exclusion Law and as members of said class, the applicants were entitled to be landed.

That said application for admission was denied by said Commissioner of Immigration; that thereafter an appeal was taken therefrom to the Secretary of Labor, and the said decision of the said Commissioner of Immigration was sustained by the said Secretary of Labor; that said decision was unfair and illegal in this:

1. That said decision is not based upon any material discrepancies appearing in the testimony of your petitioner and the said applicants, and your petitioner is informed and believes and therefore alleges the fact to be that the relationship of your petitioner and his said family, the above-named applicants, has been fully established and conceded by the said Department of Labor. [3]

2. That your petitioner is informed and believes, and therefore alleges, the fact to be that the sole ground for the excluding decision was the finding that your petitioner did not belong to the exempt

class and was not a regularly domiciled merchant, but was in fact a laundryman, and therefore not being a member of the exempt class, the applicants could not be permitted landing in the United States; that said decision was arrived at by interviewing various persons in San Francisco, California, who had done business with a certain laundry and who testified from a photograph presented to them that that was the individual who delivered their laundry; that the matter was brought to the attention of the department to the effect that such evidence was not the best evidence that could be obtained, and that your petitioner should be entitled to a confrontation of said witnesses; the Department of Labor reopened the case and permitted said confrontation of said witnesses with the result that in each and every instance, they denied that your petitioner was the laundryman who delivered their laundry, or the person whose photograph they had seen; that notwithstanding this testimony, the Secretary of Labor illegally, and without any reason or ground therefor, refused and denied your petitioner's family, the abovenamed applicants, the right to land in the United States.

3. That there is no evidence of any kind, upon which to base this excluding decision; that all the evidence offered by your petitioner and Chin Shee, Yee Tuk Oy and Yee Yuk Hing, wife and children respectively of your petitioner was cast aside and disregarded and not considered by any of the persons above referred to and the said act is arbitrary, unreasonable and illegal.

4. That all of said testimony so taken and all orders and findings of said Commissioner of Immigration and said Secretary of Labor, and all other papers, documents and proceedings in said matter of the application of Chin Shee, Tee Tuk Oy and Yee Yuk Hing, for admission to the United States are as your petitioner is informed and believes, and therefore alleges, the fact to be, incorporated in the record of the application of said Chin Shee, Yee Tuk Oy and Yee Yuk [4] Hing, for admission to the United States, and are now in the possession of and subject to the control of the Secretary of Labor, and all of them are now inaccessible to your petitioner and the said applicants; that as soon as your petitioner is able to obtain a copy of said testimony, he will ask to amend this petition and make it a part thereof.

5. That your petitioner is informed and believes, and on such information and belief, alleges that certain evidence was introduced in said record and considered by the Immigration authorities that was not submitted to the above applicants, nor applicants' counsel; that said evidence was detrimental to the applicants and it was an abuse of discretion not to have allowed counsel the right to inspect the same; that the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing, the said detained persons, have exhausted all their rights and remedies, and have no further remedy before the Department of Labor, and that unless the Writ of Habeas Corpus issue out of this court, as prayed for herein, directed to Edward White, Commissioner as aforesaid, in whose custody the bodies

of said Chin Shee, Yee Tuk Oy and Yee Yuk Hing are, the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing will be deported from the United States to China without due process of law.

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued by this Honorable Court directed to and commanding the said Edward White, Commissioner of Immigration, at the port of San Francisco, to have and produce the bodies of the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing, before this Honorable Court, at its courtroom in the city and county of San Francisco, in the Northern District of California, at the opening of court on a day certain, in order that the alleged cause of the imprisonment, detention, confinement and restraint of said Chin Shee, Yee Tuk Oy and Yee Yuk Hing and the legality or illegality thereof may be inquired into, and in order that in case the said imprisonment, detention, confinement and restraint are unlawful and illegal that the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing be discharged from all custody, imprisonment, confinement and restraint. **[5]**

Dated January 5th, 1918.

JOSEPH P. FALLON,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

Yee Won, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to those matters herein stated

on his information and belief, and as to those matters he believes it to be true.

YEE WON.

Subscribed and sworn to before me this 17th day of January, 1918.

[Seal] VIRGINIA A. BEEDE,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 17, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [6]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Order to Show Cause.

Upon reading and filing the verified petition of Yee Won, praying for the issuance of the writ of habeas corpus,—

IT IS HEREBY ORDERED, that Edward White, Commissioner of Immigration, at the port of San Francisco, at Angel Island, be and appear before the above-entitled Court, Department No. 1 thereof, on Saturday, the 19th day of January, 1918, to show cause, if any he have, why a writ of habeas corpus should not issue in this matter, and the petition

granted as prayed, and this at the hour of 10 o'clock A. M. of said day; and

IT IS FURTHER ORDERED, that said Chin Shee, Yee Tuk Oy and Yee Yuk Hing, be not removed from the jurisdiction of this Court until the further order of this Court; and

IT IS FURTHER ORDERED, that a copy of this order be served on said Edward White or such other person having the said Chin Shee, Yee Tuk Oy and Yee Yuk Hing in custody as an officer of said Edward White.

Dated January 17, 1918.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 17, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [7]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Thursday, the 21st day of March, in the year of our Lord, one thousand nine hundred and eighteen. PRESENT: The Honorable MAURICE T. DOOLING, Judge.

No. 16,330.

In the Matter of CHIN SHEE et al., on Habeas Corpus.

(Order Regarding Filing of Immigration Records, etc.)

This matter came on regularly this day for hearing on order to show cause as to the issuance of a writ of habeas corpus herein. John L. McNab, Esq., was present for and on behalf of petitioner and detained. C. A. Ornbaun, Esq., Assistant United States Attorney, was present for and on behalf of respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as Respondent's Exhibits "A" and "B," and that the same be considered as part of the original petition. After argument by the respective attorneys, the Court ordered that said matter be, and the same is hereby submitted. [8]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Now comes the respondent, Edward White, Commissioner of Immigration at the port of San Francisco, in the State and Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JNO. W. PRESTON,
United States Attorney,
CASPAR A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Mar. 21, 1918. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [9]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

(Order Sustaining Demurrer and Denying Petition for Writ.)

JOSEPH P. FALLON, Esq., Attorney for Petitioner.

JOHN W. PRESTON, United States Attorney, and CASPAR A. ORNBAUN, Asst. United States Attorney.

ON DEMURRER TO APPLICATION FOR WRIT OF HABEAS CORPUS.

The record discloses here the fact that Yee Won is the husband of Chin Shee and the father of the minor children, Yee Tuk Oy and Yee Yuk Hing, who seek admission into this country as the wife and children of a domiciled merchant.

The record also shows that Yee Won is a man of means whose right to remain here is not apparently questioned. The immigration authorities found upon evidence that would seem to warrant the finding, that he has been engaged in driving a laundry wagon quite recently. This finding deprives him of the mercantile status to which he lays claim.

It is not absolutely certain, however, that, as he himself is entitled to remain, his wife and children may not be admitted as the wife and children of one rightfully in this country who is entitled to the companionship of the wife and care and comfort of the children.

The question has never to my knowledge, been so decided, and as it is a matter of grave moment, I think if such rule be laid down it [10] should be laid down by a higher tribunal. The wife and chil-

dren have been admitted on bonds pending this hearing, and this presents a fair case through which to have the question suggested definitely determined.

In the hope that this will be done and a rule of conduct established which will be of service to all, the demurrer is sustained and the application for a writ of habeas corpus denied. If appeal be taken, the wife and children will remain upon bonds until the final decision in the appellate courts.

Apr. 2, 1918.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Apr. 3, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [11]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Notice of Appeal.

To the Clerk of said Court, and to the Honorable JOHN W. PRESTON, United States Attorney in and for the Southern Division of the United States District Court, for the Northern District of California, First Division.

You and each of you will please take notice that Yee Won, the petitioner in the above-entitled

matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein April 2, 1918, denying the petition for a writ of habeas corpus filed herein.

Dated April 9th, 1918.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Apr. 15, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [12]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Petition for Appeal.

Comes now Yee Won, the petitioner in the above-entitled matter, and respectfully shows:

That on the 2d day of April, 1918, a judgment and order was made by the above-entitled court and entered herein denying a writ of habeas corpus in the above-entitled matter and dismissing the petition of said petitioner for a writ of habeas corpus in which said judgment and order certain errors were committed to the prejudice of the above-named Chin Shee, Yee Tuk Oy, and Yee Yuk Hing, which will

more fully appear by his assignment of errors filed herewith.

WHEREFORE, your petitioner prays that an appeal may be allowed to the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors so complained of, and that the clerk of the above-entitled court be directed to make and prepare a transcript of all the papers, proceedings and record of the above-entitled matter and to transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law, and for an order that the execution of the warrant of deportation of said Chin Shee, Yee Tuk Oy and Yee Yuk Hing be stayed pending this appeal.

Dated April 9th, 1918.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Apr. 15, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [13]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Assignment of Errors.

Now comes the petitioner Yee Won through his

attorney, Joseph P. Fallon, Esq., and sets forth the errors he claims the above-entitled court committed in denying his petition for a writ of habeas corpus, as follows:

I.

That said Court erred in not granting said petition for a writ of habeas corpus.

II.

That said Court erred in denying said petition for a writ of habeas corpus.

III.

That said Court erred in holding that the petition did not show or tend to show that said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing did not obtain or were accorded a full and fair hearing or any legal hearing by said Immigration officers or by said Secretary of Labor.

IV.

That the Court erred in holding that the said Commissioner of Immigration and the Immigration Inspector acting under said Commissioner and the Secretary of Labor, did not totally and wholly disregard the testimony presented by said applicants and their witnesses and the records in the Chinese Division of the Department of Labor. [14]

V.

That the Court erred in holding that said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing had been fairly examined by said Immigration officers.

VI.

That the Court erred in not holding that said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing had been un-

fairly examined owing to the prejudicial conduct of said Immigration officials.

VII.

That the Court erred in not holding that the petitioner, Yee Won, is a merchant as defined by the Chinese Exclusion Laws, as enacted by the Congress of the United States.

VIII.

That the Court erred in not holding that the said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing as the wife and children respectively of your petitioner, Yee Won, were not entitled to enter the United States.

IX.

That the Court erred in not holding that the petitioner, Yee Won, having been adjudged by the Immigration Officials as one who was lawfully in the United States and entitled to remain therein was not also entitled to the companionship of the wife and care and comfort of his children.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Apr. 15, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [15]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Order Allowing Appeal.

It appearing to the above-entitled court that Yee Won, the petitioner herein, has this day filed and presented to the above court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor:

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the clerk of the above-entitled court make and prepare a transcript of all the papers, proceedings and record in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals, for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing, be and the same is hereby stayed pending this appeal and that said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing be not removed from the jurisdiction of this Court pending this appeal; and that the said Chin Shee, Yee Tuk Oy, and Yee Yuk Hing remain at large upon bonds until the final decision in the appellate courts.

Dated April 15, 1918.

M. T. DOOLING,
United States District Judge. [16]

[Endorsed]: Filed Apr. 15, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [17]

(Citation on Appeal—Copy.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and ANNETTE A. ADAMS, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Yee Won is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Southern Divi-

sion of the Northern District of California, this 8th day of October, A. D. 1918.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Service of the within Citation on Appeal and receipt of a copy is hereby admitted this 8th October, 1918.

ANNETTE ABBOTT ADAMS,
United States Attorney.

Filed Oct. 8, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [18]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Stipulation and Order Respecting Withdrawal of Immigration Record.

IT IS HEREBY STIPULATED and agreed by and between the attorneys for the petitioner and appellant herein, and the attorney for the respondent and appellee herein, that the original immigration record in evidence and considered as part and parcel of the petition for a writ of habeas corpus upon hearing of the demurrer in the above-entitled matter may be withdrawn from the files of the clerk of the above-entitled court and filed with the clerk of the United States Circuit Court of Appeals in and for

the Ninth Circuit, there to be considered as a part and parcel of the record on appeal in the above-entitled case with the same force and effect as if embodied in the transcript of the record and so certified to by the clerk of this court.

Dated San Francisco, California, October 8, 1918.

ANNETTE ABBOTT ADAMS,
By Asst. U. S. Att'y,
C. F. TRAMUTOLO,
United States Attorney for the Northern District of California,
Attorney for Respondent and Appellee.
JOHN L. McNAB,
JOSEPH P. FALLON,
Attorneys for Petitioner and Appellant.

Order.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said Immigration record therein referred to may be withdrawn from the office of the clerk of this Court and [19] filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by the Clerk of this Court.

Dated October 8, 1918, San Francisco, California.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Oct. 8, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [20]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,330.

In the Matter of CHIN SHEE, YEE TUK OY, and YEE YUK HING, on Habeas Corpus.

Order Extending Time to Docket Case.

Good cause appearing therefor, and upon motion of Joseph P. Fallon, Esquire, attorney for the appellant herein, it is hereby ordered that the time within which the record in the above-entitled cause may be docketed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended for a period of twenty (20) days from and after the date hereof.

Dated San Francisco, California, November 6th, 1918.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Filed Nov. 6, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [21]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 21 pages, numbered from 1 to 21, inclusive, contain a full, true and correct transcript of certain records

and proceedings, in the matter of Chin Shee et al., on Habeas Corpus, No. 16,330, as the same now remain on file and of record in the office of the clerk of this court; said transcript having been prepared pursuant to and in accordance with the praecipe for record on appeal (copy of which is embodied in this transcript) and the instructions of the attorneys for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of seven dollars and seventy-five cents ($7.75), and that the same has been paid to me by the attorneys for the appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein (page 23).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of November, A. D. 1918.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [22]

(Citation on Appeal—Original).

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Edward White, Commissioner of Immigration, Port of San Francisco, and Annette A. Adams, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San

Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Yee Won is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Southern Division of the Northern District of California, this 8th day of October, A. D. 1918.

M. T. DOOLING,
United States District Judge. [23]

Service of the within Citation on Appeal and receipt of a copy is hereby admitted this 8th October, 1918.

ANNETTE ABBOTT ADAMS,
United States Attorney.

[Endorsed]: No. 16,330. United States District Court for the Northern District of California. Yee Won, Appellant, vs. Edward White, Commissioner of Immigration, and Annette Adams, United States Attorney. Citation on Appeal. Filed Oct. 8, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

[Endorsed]: No. 3259. United States Circuit Court of Appeals for the Ninth Circuit. Yee Won, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed November 25, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed December 31, 1918. F. D. Monckton, Clerk.

No. 3259

United States

Circuit Court of Appeals

For the Ninth Circuit.

YEE WON,

Appellant,

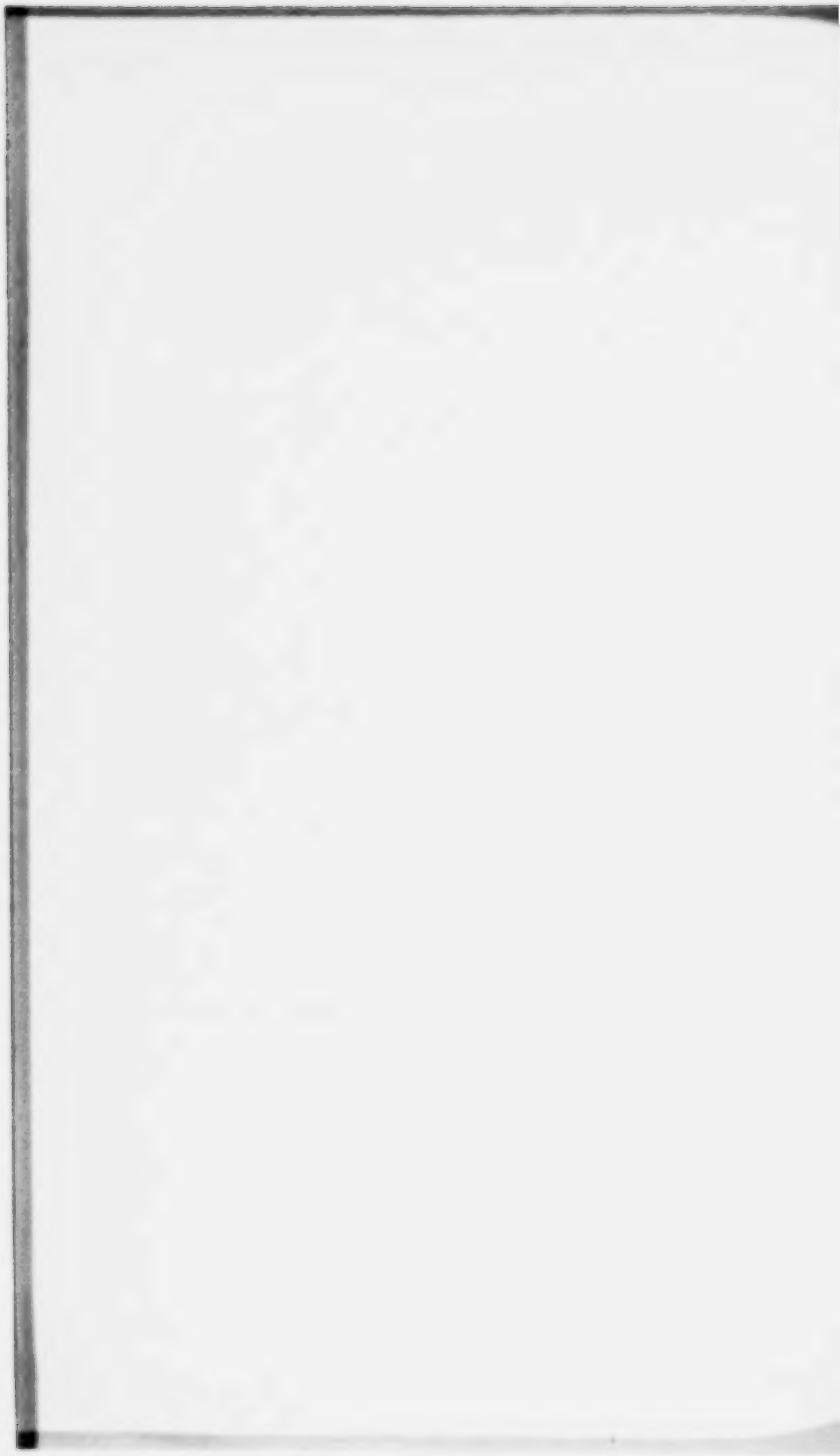
vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.



At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the eleventh day of March, in the year of our Lord one thousand nine hundred and nineteen: Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner etc.,

Appellee.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. Byron Coleman, counsel for the appellant, and by Mr. Ben F. Geis, Assistant United States Attorney, and counsel for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twelfth day of May, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the cases were heard, ORDERED that the tpyewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a judgment or decree be filed, and recorded in the minutes of this court, in each of the causes in accordance with the opinion filed therein; * * * Yee Won, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee. No. 3259. * * *

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Opinion U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Habeas corpus proceedings to secure the discharge of Chin Shee, Yee Tuk Oy and Yee Yuk Hing, held by the Commissioner of Immigration for deportation as Chinese persons not entitled to enter the United States under provision of the Exclusion Act. Appeal from the order of the District Court sustaining demurrer and denying petition for writ.

JOHN L. McNAB, JOSEPH P. FALLON, Attorneys for Appellant.

ANNETTE ABBOTT ADAMS, United States Attorney.

BEN F. GEIS, Assistant United States Attorney, Attorneys for Appellee.

Before GILBERT, MORROW and HUNT, Circuit Judges.

MORROW, Circuit Judge:

The applicants, Chin Shee, Yee Tuk Oy and Yee Yuk Hing, wife and minor children of the appellant Yee Won, arrived at the port of San Francisco, California, on the S. S. "Tjisondari" July 16, 1917. They applied for admission to the United States as the wife and minor children respectively of Yee Won, who it is alleged was a regularly domiciled Chinese merchant and a member of the exempt class. Admission was denied by the Commissioner of Immigration on the ground that the status of Yee Won as a merchant had not been satisfactorily established.

On appeal to the Secretary of Labor, the excluding decision of the Commissioner of Immigration was sustained.

Yee Won thereupon filed a petition in the District Court for a writ of habeas corpus alleging an unfair hearing by the immigration officials and abuse of the discretion committed to them by law. The United States demurred to the petition and upon a hearing the Court dismissed the petition.

The case comes here on appeal with the record of the proceedings before the Commissioner of Immigration submitted in support of such matters as are presented by the petition for the writ of habeas corpus and the demurrer to the petition.

It appears from this record that Yee Won first applied for admission into the United States at the Port of San Francisco in April 1901, as the minor

son of a resident merchant. Yee Won was then twenty years of age. Admission was denied and he was deported. He returned in November of the same year and again applied for admission as the minor son of a resident merchant and was admitted. The father of Yee Won died in San Francisco in 1908. In the latter part of 1910 Yee Won applied to the Immigration officers at the port of San Francisco for an identification of his status. He was about to depart for China and it was his purpose to secure such an identification as would secure his admission upon his return. He made no claim that he was a merchant. His claim was that he was "a capitalist and property owner." He was granted such a certificate and departed for China in January, 1911. He returned on May 29, 1914. He was then 33 years of age. He claims to have married Chin Shee in China, March 2, 1911, and that a daughter Yee Tuk Oy was born to them November 28, 1912, and a son Yee Yuk Hing was born to them on November 2, 1913. These three are the present applicants to enter the United States. They were all born in China and this is their first application to enter the United States. In support of the application of Yee Won to have his wife and minor children admitted to the United States he testified that he was "a property owner and a capitalist," and in support of that claim exhibited to the immigration officers bankbooks, certificates of stock and other documents showing that he was a person of means. He testified that he exported fruit from San Francisco to Tai Sang Fruit Co., at Sidney, New South Wales in the

years 1915, 1916 and 1917; that his firm in San Francisco was known as Tai Sang, a branch of the Australian house; that his place of business which was also the place where he lived, was 842 Washington Street, second floor, room No. 2; that his business in the years 1916 and 1917 amounted to $20,000.00. There is no evidence that there was any fruit goods or merchandise at this place. He testified that the packing and shipping was done elsewhere. In the list of property submitted by Yee Won is a lease dated September, 1910, for premises designated as No. 2426 Sacramento Street, San Francisco, for the term of twenty years, commencing the first day of October, 1910, at the rate of $25.00 per month during the first five years. Upon this and other testimony, the Immigration Inspector advised the Commissioner of Immigration that it was thought that the evidence offered was such as to justify the granting of the status of Yee Won as an exempt person, i. e., "a property holder and capitalist," and that he had done no labor during the last year past.

While the case was thus pending upon this report before the Immigration Commissioner, an anonymous letter was received by the Commissioner stating that Yee Won was not a merchant but a laundryman at Sacramento and Fillmore Streets. A further investigation of the case was immediately ordered. The place mentioned in the anonymous letter as Sacramento and Fillmore Streets was found to be 2426 Sacramento Street, which Yee Won had previously listed in his property schedule as having under lease. It was also found that this place had been a

Chinese laundry for a number of years. The immigration officer proceeded to submit a photograph of Yee Won to a number of the patrons of the laundry, who identified him as the Chinese person who had driven a laundry wagon and delivered laundry from that place for a number of years. Yee Won was thereupon called for further examination, that he might be confronted by the persons who had identified his photograph as that of their laundryman. He failed to appear and the Commissioner of Immigration thereupon decided that the exempt status of Yee Won had not been established to his satisfaction and denied the admission of the applicant on that ground.

On appeal to the Secretary of Labor, the case was reopened to take further testimony as to the personal identification of Yee Won by the witnesses who had previously identified him by his photograph. Three of the witnesses were reported out of town and their statements were not obtained. The statements of two other witnesses identifying Yee Won as their laundryman were obtained, but one of them was later not positive about the identification. Yee Ging, a cousin of Yee Won, was produced as the laundryman these witnesses had identified as Yee Won. The photographs of Yee Ging and Yee Won are in the record, and the resemblance appears to be so questionable and doubtful that certainly from their features there represented one would not be likely to be mistaken for the other. The result of this supplementary inquiry was submitted to the Assistant Secretary of Labor at Washington, and upon the whole case the Secretary of Labor sustained the

exclusion decisison of the Commissioner of Immigration at San Francisco and thereupon the case was brought to the District Court upon a petition of Yee Won for a writ of habeas corpus.

In the decision of the District Court upon the demurrer to the petition, the Court was of the opinion that the immigration authorities had found upon evidence that would warrant the finding that Yee Won had been engaged quite recently in driving a laundry wagon. This finding the Court was of the opinion deprived him of the mercantile status to which he laid claim, but the Court suggested the query, whether as Yee Won was "entitled to remain, his wife and children may not be admitted as the wife and children of one rightfully in this country who is entitled to the companionship of his wife and comfort of his children."

In this Court counsel for the appellant refers to this decision and says:

> "It will thus be seen that the sole question is whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China although held by the Immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted."

By the treaty between the United States and China concluded in November, 1880 (22 Stat. 826), excluding certain Chinese laborers from coming to the United States, it was provided, among other things, that "the limitation of suspension shall be reasonable and shall apply only to Chinese who may

go to the United States as laborers. Other classes not being included in the limitation."

It is also provided that certain Chinese subjects including "merchants" may "go and come of their own free will and accord." In Section 2 of the Act of November 3, 1893 (28 Stat. 7), Congress defined the terms "laborer" or "laborers" and "merchants" as follows:

> "Sec. 2. The words 'laborer' or 'laborers' wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.
>
> "The term 'merchant' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

In Section 1 of the Act of August, 1894, "Making Appropriations for Sundry Civil Expenses for the Government for the Fiscal Year Ending June Thirtieth, Eighteen Hundred and Ninety-Five, and

for Other Purposes" (28 Stat. 372–390), it was provided:

> "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate Immigration or Customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury."

By the Act of February 14, 1903, entitled "An Act to Establish the Department of Commerce and Labor" (32 Stat. 825), the Commissioner-General of Immigration, the Bureau of Immigration and the Immigration Service were transferred from the Treasury Department to the Department of Commerce and Labor and by the Act of March 4, 1913 (37 Stat. 736–737), to the Department of Labor. Under this last statute an appeal from the decision of the immigration officers excluding an alien from admission into the United States lies to the Secretary of Labor. This was the procedure followed in this case.

In U. S. vs. Mrs. Gue Lim, 176 U. S. 459, it was held that the wives and minor children of Chinese merchants domiciled in this country might enter the United States without certificates. They come in by reason of their relationship to the husband and father, and whether they accompany him or follow him, a certificate is not necessary in either case.

That case was a deportation case over which the judicial department of the Government has exclusive jurisdiction. The present case is an exclusion case over which the immigration officers have exclusive

jurisdiction, providing that in the administration of the law they give the applicant a fair hearing and do not abuse their discretion.

The question submitted to the immigration officers was a question of fact. Was Yee Won a merchant? This fact had to be established to their satisfaction.

In the case of In re Lee Lung, 102 Fed. 132, a writ of habeas corpus was issued by the District Court upon the petition of Lee Lung, a merchant in Portland, Oregon, on behalf of his wife and daughter who had recently arrived at that port. His status as a merchant was not denied but a landing was refused his wife and daughter by the Collector of Customs. The writ was dismissed, the Court holding that it had no jurisdiction to review the action of the Collector in such proceedings. The case was taken to the Supreme Court of the United States where the judgment of the District Court was affirmed. (Lee Lung vs. Patterson, 186 U. S. 168–170.)

In the Supreme Court it was said:

> "The testimony of several witnesses was introduced before the District Court against the objection of the district attorney. It showed that the petitioner was a merchant of Portland, Oregon; that he had gone back to China and there married Li Tom Shi according to the Chinese customs and with the usual Chinese ceremonies, but that he had another wife with whom he lived when in China, and that Li A. Tsoi was the daughter by that wife. It was testified that a man in China could have as many wives as he had means to support."

The objection to the landing of Li Tom Shi appears to have been that the laws of the United States did not recognize plural marriages, and while they might be so recognized in China, the said Li Tom Shi was not the valid wife of Lee Lung under our laws. The objection to the landing of Li A. Tsoi, the daughter of Lee Lung by his first wife, was that the evidence was conflicting and inconclusive and not of the satisfactory character required. The Court referring to the decision of the District Court holding that it was without jurisdiction to review the decision of the Collector of Customs, said:

> "It was decided in Nishimura Ekiu's case that Congress might entrust to an executive officer the final determination of the facts upon which an alien's right to land in the United States was made to depend, 'and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to re-examine the evidence on which he acted, or to controvert its efficiency.' This doctrine was affirmed in Lem Moon Sing vs. United States, 158 U. S. 538, and at the present term in Fok Yung Yo vs. United States, 185 U. S. 296, and Lee Gon Yung vs. United States, 185 U. S. 306."

In conclusion, the Court said:

> "But jurisdiction is given to the Collector over the right of the alien to land, and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to

controvert it, and we cannot assent to the proposition that an officer or tribunal, invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence, or by rejecting proper evidence, or by admitting that which is improper."

In Low Wah Suey vs. Backus, 225 U. S. 460–468, the Supreme Court has again declared the conclusiveness of decisions of the executive officers of the Government in this class of cases:

> "A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final. United States v. Ju Toy, 198 U. S. 253; Chin Yow vs. United States, 208 U. S. 8; Tang Tun vs. Edsell, 223 U. S. 673."

The District Judge in the present case did not find that a fair hearing had been denied the petitioner or that there had been any abuse of discretion on the part of the immigration officers in the proceedings and we do not so find, after a careful inspection of the record. Chin Yow vs. United States, 208 U. S. 812.

We conclude, therefore, that there was nothing in the case for the District Court to review and that the judgment of the Court dismissing the petition was correct.

The judgment of the District Court is accordingly affirmed.

[Endorsed]: Opinion. Filed May 12, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the order

of the said District Court appealed from in this cause be, and hereby is, affirmed.

[Endorsed]: Decree. Filed and entered May 12, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Tuesday, the fourteenth day of October, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,

Appellee.

Order Denying Petition for a Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the case was heard, it is ORDERED that the petition, filed June 16, 1919, on behalf of the appellant for a

rehearing of the above-entitled cause be, and hereby is denied.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Order Staying Issuance of Mandate, etc.

Upon application of Mr. Joseph P. Fallon, counsel for Yee Won, and good cause therefor appearing:

IT IS ORDERED: The mandate of this Court under Rule 32 in the above-entitled cause be stayed for a period of thirty days from the 19th instant, on condition that the petition for writ of certiorari to be made to the Supreme Court of the United States be filed and docketed in said Supreme Court within the time so extended, and submitted to said Supreme Court agreeably to Subdivision 4 of Rule 37 of the Rules of the said Supreme Court, and in that event the said mandate be stayed until after the determination of said petition.

Dated San Francisco, Cal., October 17th, 1919.

WM. B. GILBERT,

Senior United States Circuit Court Judge.

[Endorsed]: Order Staying Issuance of Mandate, etc. Filed October 17, 1919. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Praecipe for Transcript of Record.

To the Clerk of the said Court:

Sir: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals) and not less than nine uncertified copies thereof, for use on an application to be made to the Supreme Court of the United States for the issuance of a writ of certiorari under Section 240 of the Judicial Code, in the above-entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered Mar. 11, 1919;

3. Order Directing Filing of Opinion, etc., May 12, 1919.

4. Opinion, filed May 12. 1919.

5. Decree, filed and entered May 12, 1919.

6. Order Denying Petition for Rehearing, entered Oct. 14, 1919.

7. Order Staying Issuance of Mandate, filed Oct. 17, 1919.

8. Praecipe for Transcript of Record.

9. Certificate of Clerk U. S. Circuit Court of Appeals to said Transcript.

JOSEPH P. FALLON,
Counsel for Appellant.

Service of a copy of the within Praecipe is hereby admitted this 31st day of October, A. D. 1919.

ANNETTE ABBOTT ADAMS,
Counsel for Appellee.

[Endorsed]: Praecipe for Transcript of Record. Filed November 1, 1919. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3259.

YEE WON,

Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-six (46) pages, numbered from and including 1 to and including 46, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding all original exhibits, made pursuant to praecipe of counsel for the appellant, filed on the 1st day of November, A. D. 1919, and certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this seventh day of November, A. D. 1919.

[Seal] F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Yee Won is appellant, and Edward White, as Commissioner of Immigration, Port of San Francisco, is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of January, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,389. Supreme Court of the United States, October Term, 1919. No. 634. Yee Won vs. Edward White, Commissioner of Immigration, Port of San Francisco. Writ of Certiorari. Docketed. No. 3259. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 29, 1920. F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

In the Supreme Court of the United States, October Term, 1920.

No. 209.

YEE WON, Petitioner,

vs.

EDWARD WHITE, Comm'r.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the

return of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit to the writ of certiorari granted therein.

October 19, 1920.

(Sgd.) W. WALTON HENDRY,
Counsel for Petitioner.

(Sgd.) WM. L. FRIERSON,
Solicitor General.

[Endorsed:] Stipulation as to return to writ of certiorari. Filed October 29, 1920. F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3259.

YEE WON, Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari" filed in the above entitled cause on the 29th day of October, A. D. 1920, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of October, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*
By PAUL P. O'BRIEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3259.

YEE WON, Appellant,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco, Appellee.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari, issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said writ a certified copy of:

(1) Stipulation as to Return to Writ of Certiorari, the original of which said Stipulation was filed in said cause on this 29th day of October, A. D. 1920; and

(2) Respondent's Exhibits "A" and "B,"

and in accordance with said stipulation, do hereby send the certified copy thereof, together with the original exhibits, to the said Supreme Court as the Return to the said Writ of Certiorari.

In testimony whereof, I have hereunto set my hand and affixed the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 29th day of October, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*,
By PAUL P. O'BRIEN,
Deputy Clerk.

[Endorsed:] 209/27,389.

[Endorsed:] File No. 27,389. Supreme Court U. S., October Term, 1920. Term No. 209. Yee Won, Petitioner, vs. Edward White, as Commissioner of Immigration, etc. Writ of certiorari and return. Filed November 5, 1920.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1919

No. [redacted]209

YEE WON,

Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI.

To be Addressed to the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

M. WALTON HENDRY,
JOSEPH P. FALLON,
Hearst Building, San Francisco,
Attorneys for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1919

No.

YEE WON,
Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To be Addressed to the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Edward Douglass White, Chief Justice, and the Associate Justices of the Supreme Court of the United States.

Your petitioner respectfully shows:

The family of your petitioner consisting of wife and two minor children arrived at the port of San Francisco, California, on the SS. "Tjisondari" July

16, 1917. They applied for admission to the United States as the wife and minor children of your petitioner, who is a regularly domiciled Chinese merchant and a member of the exempt class. Admission was denied by the Commissioner of Immigration on the ground that your petitioner had not established satisfactorily his status as a merchant. An appeal was taken therefrom to the Secretary of Labor and the excluding decision of the Commissioner was sustained. Your petitioner thereupon filed a petition in the District Court for a writ of habeas corpus. The petition was dismissed by the court, which rendered the following opinion:

> "The record discloses here the fact that Yee Won is the husband of Chin Shee and the father of the minor children, Yee Tuk Oy and Yee Yuk Hing, who seek admission into this country as the wife and children of a domiciled merchant.
>
> The record also shows that Yee Won is a man of means whose right to remain here is not apparently questioned. The immigration authorities found upon evidence that would seem to warrant the finding, that he has been engaged in driving a laundry wagon quite recently. This finding deprives him of the mercantile status to which he lays claim.
>
> It is not absolutely certain, however, that, as he himself is entitled to remain, his wife and children may not be admitted as the wife and children of one rightfully in this country who is entitled to the companionship of the wife and care and comfort of the children.
>
> The question has never to my knowledge, been so decided, and as it is a matter of grave moment, I think if such rule be laid down it

should be laid down by a higher tribunal. The wife and children have been admitted on bonds pending this hearing, and this presents a fair case through which to have the question suggested definitely determined."

An appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit and the opinion of the lower court was sustained. The Circuit Court of Appeals in its opinion does not touch on the point of law raised by the decision of the District Court, to wit, whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China, although held by the Immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted. Your petitioner respectfully submits that a denial of such a right is a violation of our treaty with China. By the treaty between China and the United States, dated November 27, 1880, it is agreed that:

"Whenever in the opinion of the government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country, or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese

laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse." Article I.

And:

"Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation." Article II.

This treaty has been construed innumerable times both by the Supreme Court of the United States and by other federal tribunals to permit a merchant to bring into this country his wife and children. The same reasoning by which this privilege (we may call it right) has been extended to the wife and children of a Chinese merchant is equally applicable to the wife and children of a Chinese laborer who is entitled under Article II of the treaty to remain in the United States and to go and come of his own free will and accord.

The right to the comfort and companionship of one's family is a natural one and was recognized by several of the judges in the federal courts prior to the famous case of United States v. Gue Lim, 20 S. Ct. 415; 176 U. S. 459.

In re Tung Yeong, 19 Fed. 184, Judge Hoffman said:

> "It was not without satisfaction that I found there was no requirement of the law which would oblige me to deny to a parent the custody of his child and to send the latter back across the ocean to the country from which he came."

Judge Deady in one of the earliest cases construing the treaty in conjunction with the Chinese Exclusion Acts said, in the case of In re Chung Toy Ho, 42 Fed. 398:

> "It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France."

In United States v. Gue Lim, supra, all the cases in which the question had theretofore arisen were before the Supreme Court of the United States and it rendered its decision in accordance with that of Judge Deady in the Chung Toy Ho case.

A careful examination of the treaty will show that the same rule must be followed in the case of Chinese laborers who were then in the United States, as in the case of teachers, students or tourists. They are all classed together and the treaty provides that all "shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation". This would entitle all of the classes mentioned in the treaty to all of these rights, privileges, immunities and exemptions as long as the same rights, privileges, immunities and exemptions were enjoyed by the citizens and subjects of other nations.

These persons have a certain status and it has been held that that status continues with them as far as their right to remain in the country is concerned, notwithstanding that through choice or necessity they are forced to change their occupation. Such was the decision of the District Court in United States v. Fong Hong, 233 Fed. 168. In that case a Chinese merchant entered the country under a Section 6 certificate and subsequently became a laborer. It was held that this did not affect his right to remain in the United States. Had he subsequently to his laboring sought to bring his wife and children into the country can it be seriously contended that they would not have been entitled to land? They would have been the family of a person lawfully entitled to remain in the United States; his domicile would have been their

domicile, and his natural right to their company, their care and their custody would be none the less a fact by reason of his change of occupation.

The treaty of 1880 accords your petitioner certain rights, privileges, immunities and exemptions, and that treaty is the supreme law of the land. Those rights, privileges, immunities and exemptions can not be abridged by reason of the means by which your petitioner seeks his livelihood while a resident in the United States. Among those rights, privileges, immunities and exemptions are the rights to the keep and companionship of his wife and the care and custody of his children, and by the common law his domicile is their domicile.

Wherefore, because of the gravity and importance of the question involved, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them, and each of them, to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the records and proceedings of the said Circuit Court of Appeals in the said case lately pending therein, entitled "Yee Won, Appellant, vs. Edward White, as Commissioner of Immigration, Port of San Francisco, Appellee, No. 3259", to the end that the decision and judgment of said Circuit Court of Appeals may be reviewed, as provided in Section 240 of the Act of Congress approved March 3, 1911, and that

your petitioner may have such other and further relief or remedy in the premises, as to this court may seem appropriate and in conformity with said Act, and that the decisions and the judgments of the said Circuit Court of Appeals and of the Southern Division of the United States District Court for the Northern District of California, First Division, in the said case, and every part thereof may be reversed by this Honorable Court.

And your petitioner now presents, as an exhibit to his petition, a certified copy of the entire transcript of record of the case, including the proceedings in the United States Circuit Court of Appeals for the Ninth Circuit, to which court he prays the writ of certiorari may be directed.

And your petitioner will ever pray.

M. WALTON HENDRY,
JOSEPH P. FALLON,
Attorneys for Petitioner.

Wm E. Harvey
of counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioner and that in my opinion the foregoing and annexed petition for a writ of certiorari is well founded as to matters of fact and as to questions of law, and is not interposed for delay.

M. WALTON HENDRY,
Of Counsel for Petitioner.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1919

No.

YEE WON,
Petitioner,

vs.

EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Respondent.

NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI.

To A. Mitchell Palmer, Attorney General of the United States, and Assistant Attorney General of the United States, Washington, D. C.

Sirs:

You, and each of you, will please take notice that the petitioner above named, through his counsel, will present, to the above named court, on the.....

day of January, 1920, at the hour of twelve o'clock noon of said day, or as soon thereafter as his counsel can be heard, at the courtroom thereof in the Capitol Building, in the City of Washington, District of Columbia, a petition for a writ of certiorari.

Said petition will be based upon this notice, the accompanying petition for a writ of certiorari and all of the papers and records on file.

Yours, etc.,

M. WALTON HENDRY,

JOSEPH P. FALLON,

Attorneys for Petitioner.

Receipt of a copy of the foregoing petition for writ of certiorari and notice of presentation of petition for writ of certiorari is hereby admitted this .....day of January, 1920.

.....

Attorney General of the United States.

.....

Assistant Attorney General of the United States.

Attorneys for Respondent.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No. 209

YEE WON,
Appellant,
vs.
EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Appellee.

BRIEF FOR APPELLANT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

M. WALTON HENDRY,
JOHN L. McNAB,
JOSEPH P. FALLON,
Attorneys for Appellant.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1920

No. 209

YEE WON,
Appellant,
vs.
EDWARD WHITE, as Commissioner of Immigration, Port of San Francisco,
Appellee.

BRIEF FOR APPELLANT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

The opening statement in Respondent's Brief is substantially correct with the exception of the reference to the immigration records on page three thereof, to the effect that certain records were not made a part of the record before this Court. On the contrary, the said immigration records were made a part of the recod by stipulation and are now

on file in this Court. An examination, therefore, can be had as to whether the demurrer to the petition was properly sustained by an examination of the original petition together with the immigration records afterwards made a part of it.

Assuming that the immigration officials can, in the face of positive evidence of wealth and mercantile status, hold a man to be a laborer on a qualified identification of the photograph of petitioner as a person seen driving a laundry wagon there is but a single question of law involved and that question, together with the facts upon which it is predicated, is best and most concisely stated by the Court below in its order above mentioned. The portion of that order pertaining to these issues is as follows:

> "The record discloses here the fact that Yee Won is the husband of Chin Shee and the father of the minor children, Yee Tuk Oy and Yee Yuk Hing, who seek admission into this country as the wife and children of a domiciled merchant.
>
> The record also shows that Yee Won is a man of means whose right to remain here is not apparently questioned. The immigration authorities found upon evidence that would seem to warrant the finding, that he has been engaged in driving a laundry wagon quite recently. This finding deprives him of the mercantile status to which he lays claim.
>
> It is not absolutely certain, however, that, as he himself is entitled to remain, his wife and children may not be admitted as the wife and children of one rightfully in this country who is entitled to the companionship of the wife and care and comfort of the children.

> The question has never to my knowledge been so decided, and as it is a matter of grave moment, I think if such rule be laid down it should be laid down by a higher tribunal. The wife and children have been admitted on bonds pending this hearing, and this presents a fair case through which to have the question suggested definitely determined."

It will thus be seen that the sole question is whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China, although held by the immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted.

We respectfully submit that a denial of such a right is a violation of our treaty with China. By the treaty between China and the United States dated November 17, 1880, it is agreed that:

> "Whenever in the opinion of the government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country, or of any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation,

> or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse." Article I.

And:

> "Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation." Article II.

This treaty has been construed innumerable times both by the Supreme Court of the United States and by other Federal tribunals to permit a merchant to bring into this country his wife and children. The same reasoning by which this privilege (we may call it right) has been extended to the wife and children of a Chinese merchant is equally applicable to the wife and children of a Chinese laborer who is entitled under Article II of the treaty, to remain in the United States and to go and come of his own free will and accord.

The right to the comfort and companionship of one's family is a natural one and was recognized by several of the judges in the Federal Courts prior to the famous case of United States v. Gue Lim, 20 S. Ct. 415; 176 U. S. 459.

In re Tung Yeong, 19 Fed. 184, Judge Hoffman said:

> "It was not without satisfaction that I found there was no requirement of the law which would oblige me to deny to a parent the custody of his child and to send the latter back across the ocean to the country from which he came."

Judge Deady, in one of the earliest cases construing the treaty in conjunction with the Chinese Exclusion Acts, said, in the case of In re Chung Toy Ho, 42 Fed. 398:

> "It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France."

The late Supreme Justice Field of the Supreme Court of the United States held in what is known as the case "of the Chinese wife", 21 Fed. 785, as follows:

> "It is contended by the district attorney that the status of the petitioner is that of her husband, and therefore she must be regarded as a laborer, and, as such, required to furnish a

> laborer's certificate to establish her right to enter the United States. This position might, in some instances, be tenable; but there are many callings of a man which the wife would not, from her relationship to him, be deemed to follow; such as that of a lawyer or physician, or of a merchant or manufacturer. We think the case of a wife falls under the sixth section of the act. She is to be regarded as a person other than a laborer, and, as such, required to present the certificate from her government there designated."

In a dissenting opinion by Judge Sawyer, he sets forth the two propositions, one favorable to the view of the wife, and the other in opposition to it. That in favor of the wife follows:

> "The argument in favor of petitioner's husband's right to land his wife is that the restriction act purports to be 'An act to execute certain treaty stipulations relating to Chinese'—not to abrogate them; that all the provisions of the act scrupulously avoid everything that expressly conflicts with the treaty; that the treaty expressly provides that 'all Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nations'; that among the 'rights and privileges' accorded to citizens of all other nations, are, to come of their own free will and accord, and to bring their wives and children with them; that the treaty, therefore, in clear, express and unmistakable terms, secures these same rights and privileges to returning Chinese laborers of bringing their wives and children with them, as rights belonging and pertaining

> to the husband and father; that congress has not excluded their wives and children by name or in express terms; and that it is not to be presumed, from any general language used in the act, that congress intended to override and abrogate the rights thus specifically and expressly secured by the treaty, thereby to that extent repealing or abrogating the treaty."

It is to be remarked, after reading the above, that the construction sought for by Justice Field was that every Chinese person, whether coming to the United States for the first time, or whether returning to a previously acquired domicile therein, was required to present the certificate provided for in Section 6. The main part of the learned Justice's holding to which we advert is the fact that he expressly held that the wife of a lawfully domiciled laborer was entitled to admission. With respect to the requirement of the certificate it is to be remarked that the Supreme Court subsequently in the case of Lau Ow Bew v. U. S., 144 U. S. 47, Justice Field dissenting, held that this requirement did not extend to a merchant who was returning to a previously acquired domicile in this country. That it manifestly applied only to those who were coming here in the first instance. The next step was the decision of the Supreme Court in the case of United States v. Mrs. Gue Lim, 176 U. S. 459, in which it was held that the wife and minor children of a domiciled merchant were not required to procure the certificate in question, as they came in by virtue of their husband's and

father's status. We are not advised that the question of the right of the wife or child of a lawfully domiciled laborer to land has ever been passed upon by the Supreme Court. In the recent case of Chin Fong v. Backus, 241 U. S. 1-5, supra, the Court would seem to recognize the equality of interests between laborers lawfully domiciled within the United States and others of the nonlaboring class, and in the still more recent case of White v. Chin Fong, supra, it will be noted that the right of a judicial hearing upon the question of legality of prior residence was not restricted to merchants, but would seem to be extended to all those returning to this country.

A careful examination of the treaty will show that the same rule must be followed in the case of Chinese laborers in the United States, as in the case of teachers, students or tourists. They are all classed together and the treaty provides that all "shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation". This would entitle all of the classes mentioned in the treaty to all of these rights, privileges, immunities and exemptions as long as the same rights, privileges, immunities and exemptions were enjoyed by the citizens and subjects of other nations.

These persons have a certain status and it has been held that that status continues with them as far as their right to remain in the country is concerned, notwithstanding that through choice or ne-

cessity they are forced to change their occupation. Such was the decision of the District Court in United States v. Fong Hong, 233 Fed. 168. In that case a Chinese merchant entered the country under a Section 6 certificate and subsequently became a laborer. It was held that this did not affect his right to remain in the United States. Had he subsequently to his laboring sought to bring his wife and children into the country, can it be seriously contended that they would not have been entitled to land? They would have been the family of a person lawfully entitled to remain in the United States; his domicile would have been their domicile, and his natural right to their company, their care and their custody would be none the less a fact by reason of his change of occupation.

The record here does not disclose whether the appellant was originally a merchant and changed his occupation prior to seeking entry for his wife and children, but the record does show, in the language of the Court below "that Yee Won is a man of means whose right to remain here is not apparently questioned".

The immigration record discloses that the petitioner is a man of substantial fortune, amassed in this country. As a matter of fact, it is contended, on evidence which petitioner's counsel does not regard as seriously conflicting, that the whole case rests on mistaken identity. Certain witnesses identified petitioner's photograph as that of a man seen driving a laundry wagon. On being confronted by

petitioner, at least one admitted the mistake and others qualified their identification. The treaty of 1880 accords him certain rights, privileges, immunities and exemptions and that treaty is the supreme law of the land. Those rights, privileges, immunities and exemptions cannot be abridged by reason of the means by which he seeks his livelihood while a resident in the United States.

Among those rights, privileges, immunities and exemptions are the rights to the company and companionship of his wife and the care and custody of his children, and by the common law his domicile is their domicile.

It is therefore respectfully submitted in the present case that the demurrer should be overruled, and the writ directed to issue.

Dated, San Francisco,
April 4, 1921.

Respectfully submitted,
M. WALTON HENDRY,
JOHN L. MCNAB,
JOSEPH P. FALLON,
Attorneys for Appellant.

No. 209.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

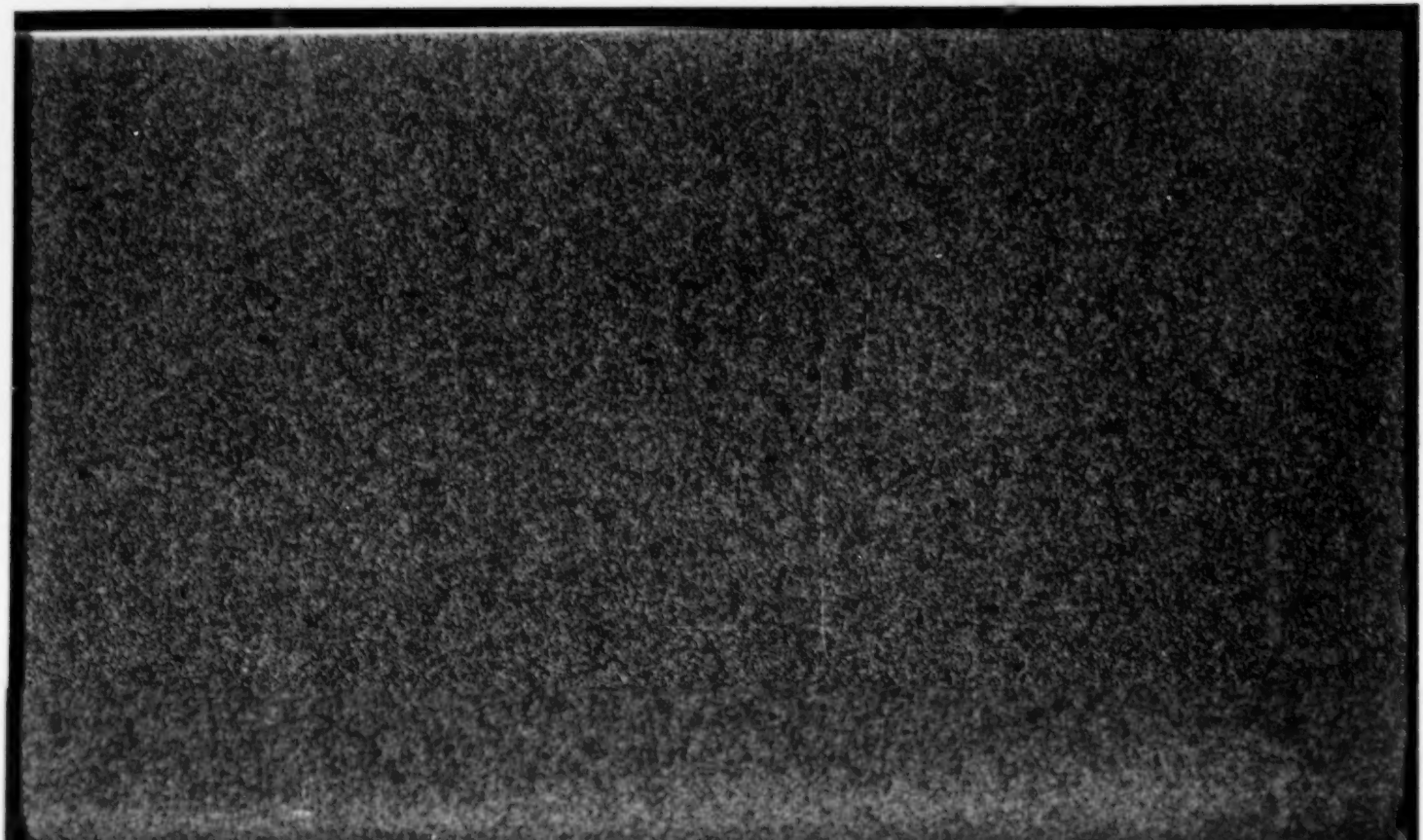
YEE WON, PETITIONER,

v.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.



In the Supreme Court of the United States.

OCTOBER TERM, 1920.

YEE WON, PETITIONER,
v.
EDWARD WHITE, AS COMMISSIONER OF Immigration, Port of San Francisco, Respondent. } No. 209.

ON WRIT OF CERTIORARI TO THE UNITES STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

The writ of certiorari was granted in this case to review a judgment of the Circuit Court of Appeals affirming a judgment of the District Court declining to grant a writ of habeas corpus. (258 Fed. 792.)

The writ of habeas corpus was sought by the petitioner, a Chinese person, to have released from custody his wife and two minor children, who had been denied by the immigration authorities the right to enter this country.

THE PETITION.

The petition alleged that the petitioner "is a Chinese person and a regularly domiciled merchant residing in the United States," and his wife and minor children were, under the law, entitled to enter the

United States. It is then alleged that the wife and children are unlawfully detained by the Commissioner of Immigration and are about to be deported from San Francisco. It is alleged that the wife and children arrived at the port of San Francisco from China in July, 1917, and made application to the Commissioner of Immigration for admission to the United States, but that this application was denied by the Commissioner of Immigration upon the ground that petitioner was not a merchant, but was in fact a laundryman, and that later the Department of Labor reopened the case for the taking of further evidence, but the decision excluding the wife and children was adhered to and finally approved by the Secretary of Labor. It was also alleged that all the testimony taken and the orders and findings of the Commissioner of Immigration and the Secretary of Labor and all other papers, documents, and proceedings were incorporated in the record of the application for admission and were then in the possession and subject to the control of the Secretary of Labor, and were therefore inaccessible to petitioner, but that as soon as petitioner should be able to obtain a copy of the testimony he would ask to amend his petition and make it a part thereof. (Rec. pp. 2–7.)

An order was made requiring the respondent to show cause why the writ of habeas corpus should not issue. Later, by agreement of the parties, the immigration records referred to above were produced and filed and made a part of the original petition. (Rec.

p. 10.) A demurrer to the petition was then sustained. (Rec. p. 12.)

An appeal to the Circuit Court of Appeals having been taken, by agreement of parties the original immigration records above referred to were ordered to be withdrawn from the files of the clerk of the District Court and filed with the clerk of the United States Circuit Court of Appeals, which was done. (Rec. pp. 20–21.) The Circuit Court of Appeals, with the entire record before it, affirmed the judgment. The record brought here contains the original petition, but does not contain the immigration records, which were afterwards made a part of the petition. What was contained in these records now appears only from the statements contained in the opinion of the Circuit Court of Appeals. (Rec. p. 32.)

Whether the demurrer to the petition was properly sustained must, of course, be determined by an examination of the original petition, together with the immigration records afterwards made a part of it. Such an examination can not be made upon the present record, unless the statements in the opinion of the Circuit Court of Appeals as to what appeared from the immigration records be taken as correct.

THE FACTS.

According to the opinion of the Circuit Court of Appeals, the facts appearing in the immigration records, which were made a part of the petition, are substantially as follows:

The petitioner was first admitted into the United States as the minor son of a resident merchant in

November, 1901. His father died in San Francisco in 1908. In the latter part of the year 1910, desiring to go to China, he applied to the immigration officers at San Francisco for an identification of his status in order to enable him to return. He made no claim that he was a merchant—his claim was that he was "a capitalist and property owner." He was granted a certificate and departed for China in January, 1911, returning in May, 1914. While in China, in 1911, he married the wife involved in this case, and the two children were born in China in 1912 and 1913, respectively.

In support of the application of his wife and children to be admitted, he testified that he was "a property owner and capitalist," and also that he was engaged in exporting fruit from San Francisco to an Australian house, his firm in San Francisco, known as Tai Sang, being a branch of the Australian house. He gave his place of business and also the place where he lived as 842 Washington Street, second floor, room No. 2. There was no evidence that there was any fruit or merchandise at this place, and he testified that the packing and shipping was done elsewhere. The immigration inspector advised the commissioner that it was thought that the evidence offered was sufficient to justify the granting of the status of petitioner as an exempt person, i. e., "a property holder and capitalist," and that he had done no labor during the past year.

Pending action on this report, information was received by the commissioner to the effect that petitioner

was not a merchant but a laundryman. Some investigation was made, and petitioner was called on for further examination, in order to be confronted by the persons who had identified him as a laundryman. He failed to appear, and the commissioner decided that his exempt status had not been established, and denied admission to his wife and children. On appeal, the Secretary of Labor reopened the case for further testimony, and there was testimony, more or less conflicting, on the question as to whether he had been engaged as a laundryman. The commissioner, however, upon full consideration, decided that he was a laundryman and had been so engaged, and denied the application. This finding was approved by the Secretary of Labor.

THE LAW.

By the treaty between the United States and China, concluded in November, 1880 (22 Stat. 826), it was provided, in Article I, that—

> Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not

> being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

And by Article II it was provided:

> Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

Pursuant to this treaty, the act of May 6, 1882 (22 Stat. c. 126, p. 58), was passed, suspending for ten years the coming of Chinese laborers to the United States. By subsequent acts of Congress this suspension has been in force ever since.

By the treaty of March 17, 1894 (28 Stat. 1210), it was agreed that for a period of ten years the coming of "Chinese laborers to the United States shall be absolutely prohibited," except that this shall not apply—

> to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement.

The treaty then regulated the manner in which laborers within this excepted class should be allowed to depart from and return to this country. This treaty was to remain in force for a period of ten years, and also for a further period of ten years unless within six months before the expiration of the first period of ten years either Government should formally give notice to the other of its final termination.

The act of November 3, 1893 (28 Stat. c. 14, p. 8), defined the terms "laborer" and "merchant" as follows:

> The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.
>
> The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

In section 1 of the act of August 18, 1894 (28 Stat. c. 301, pp. 372, 390), it was provided:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

By the act of March 4, 1913 (37 Stat. c. 141, p. 736), the Bureau of Immigration and the Immigration Service were transferred to the Department of Labor, and an appeal from the decision of the immigration officers excluding an alien from admission into the United States was to the Secretary of Labor instead of to the Secretary of the Treasury.

QUESTION INVOLVED.

There is no claim that the wife and children in this case are entitled to be admitted in their own right. If admitted at all, they must be admitted in the right and upon the status of the petitioner himself. His right was predicated upon the claim that he was a merchant. This claim has been decided against him by the tribunal whose judgment Congress has declared shall be final. Manifestly, the petitioner must succeed, if at all, upon the ground that, as a laundryman, which is included in the definition of "laborer," he is entitled to bring into the country his wife and children because he himself is entitled to remain here. In the opinion of the

Circuit Court of Appeals it is said that in that court the present petitioner, through his counsel, said:

> It will thus be seen that the sole question is whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China, although held by the immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted. (Rec. p. 36.)

This, however, is not quite an accurate statement. It was not decided that petitioner had *lost* his status as a merchant. It did not appear that he ever had such a status. The finding was that he was engaged as a laundryman, and was therefore a laborer. The question then is: Is a Chinese laborer, who, for any reason, is entitled to remain in this country, entitled to bring in his wife and minor children?

BRIEF.

I.

The Coming Into this Country of Chinese Laborers Is Absolutely Prohibited.

All the legislation of Congress on this subject has been directed to the exclusion from this country of Chinese laborers. The prohibition against such laborers coming into the country is absolute, with two exceptions. Such laborers in this country at the time the treaty of 1880 was entered into are permitted to leave the country and return, and indeed, are put in the same class with merchants. Under the treaty of 1894 Chinese laborers departing temporarily from this country may return if they

have living here certain relatives or own here a certain amount of property. With this exception, there is no way in which a Chinese laborer can lawfully enter this country.

II.

Chinese Persons Other than Laborers May Be Admitted Provided They Comply with Statutory Regulations.

Chinese persons, other than laborers, are not prohibited from coming to this country. The statutory regulations so far as they relate to merchants and persons other than laborers are intended to secure the Government against imposition by laborers coming in under the guise of members of the excepted class.

III.

The Petitioner, Upon this Record, Has No Status Except That of a Laborer.

The finding of the immigration authorities, approved by the Secretary of Labor, is determinative of the claim of petitioner that he is a merchant and establishes conclusively the fact that he is a laborer. He is not a laborer who was in this country when the treaty of 1880 was entered into, for he came here first in 1901. It does not appear even that he is the son of a Chinese laborer who was in this country prior to 1880. He did not enter in 1901 in his own right or upon his own status, but upon the status of his father, who was a merchant. So far as it appears, he himself has never had a status as a merchant. As a minor, he was permitted to enter upon his father's status. It does not appear that he has claimed ever to have been himself engaged in the mercantile busi-

ness, except that, in support of the right of his wife and children to enter, he claimed to have been engaged in mercantile pursuits in 1915, 1916, and 1917, after his return to this country in 1914. Even if it be assumed that he was, as he claimed, interested in a mercantile business during these years, that fact can avail him nothing, since it is established that during those years he was actively engaged as a laundryman, and therefore brought himself within the statutory definition of a laborer. When he departed for China in 1910, he made no claim that he was a merchant. His claim then was merely that he was a capitalist and property owner. Upon this statement, he was given a certificate entitling him to return, presumably on the ground that this brought him, even if a laborer, within the exception of the treaty of 1894. It can scarcely be claimed that one is entitled to the status of a merchant merely because, as a child, he was allowed to enter the country because his father was a merchant. The father's status would not control the status of the son except during minority. Upon reaching his majority, the status of such a son would depend, of course, upon his own occupation. If thereafter he was occupied as a laborer, he would, having been lawfully brought into the country, be entitled to remain, but his status would be that of a laborer. It is obvious, therefore, that the most that can be claimed in this case is that having been brought to this country in his infancy by his father, who was a merchant, he is entitled to remain, and that, having prior to 1910 acquired property to the extent men-

tioned in the treaty of 1894, he was entitled to go to China and return, although he was, in fact, a laborer within the meaning of the Act of Congress. The question, therefore, is whether a wife and children, who are entitled to enter, if at all, only by virtue of his status, can be admitted when he has only the status of a laborer.

IV.

The Right of a Merchant to Bring to this Country his Chinese Wife and Children Results from the Fact that, Owing to his Status as Merchant, such Wife and Children Can Not Be Said to Be within the Prohibited Class of Laborers.

The case of the petitioner seems to rest entirely upon the proposition that because he is himself entitled to remain in this country he is entitled to bring in his wife and children. In other words, the claim is that, being entitled to remain here, he is entitled to all the privileges which belong to merchants and others of the classes to which the exclusion treaties and laws do not apply. It is true this court has held that a Chinese merchant domiciled in this country may lawfully bring in his wife and minor children, but an examination of the case of *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, will show that the ground upon which that conclusion was reached necessarily leads to the rejection of this claim. In that case, speaking of the legislation on this subject, it was said: "It is the coming of Chinese laborers that the act is aimed against." (Id. p. 467.) It was then shown that the woman and minor children in question were not coming to this country as laborers, but as members of the family of a merchant.

It was held that a fair interpretation of the treaties and statutes on the subject led to the conclusion that it was never intended to prevent Chinese merchants domiciled in the United States from bringing in their wives and minor children. This was because the only positive prohibition of the law was against the coming in of laborers; and since these women and children were not coming as laborers, it was no violation of the law to admit them. They came as members of the family of a merchant, and, as such, would have a status other than that of laborers. The treaty and statutes expressly permitted the merchant to bring in body and household servants. If such a merchant, however, had claimed the right to bring in farm laborers to work for him, there would have been no difficulty in concluding that he could not do this, for the reason that he would then be bringing in laborers in direct violation of the law.

In this case the woman and children involved, if admitted, will come in as members of the family of a laborer and will partake of his status. That his status is that of a laborer is conclusively settled by the finding of the immigration authorities, approved by the Secretary of Labor. *Lee Lung* v. *Patterson*, 186 U. S. 168. To accord, therefore, to a laborer in this country the same right which is accorded to merchants and others in the excepted classes would be to permit a direct violation of the positive prohibition of the law. When admitted, they would have the status of the petitioner, and their admission would therefore be the admission of laborers within

the meaning of the act of Congress. The only exception to the prohibition against the coming in of Chinese laborers is those who come as the body or household servants of merchants or others in the excepted class. The admission of the wives and minor children of merchants is not an exception to the rule. Such persons, when admitted, do not have the status of laborers, but partake of the status of a merchant. To admit them in the case of a laborer, however, would be to introduce another exception, which the statute does not make. This is true because, when admitted, they will partake of the status of the laborers in whose right they claim admission

If for a year preceding his return to the United States the petitioner had himself been engaged in China as a laborer, as he was engaged in this country, he would not have been entitled to return except for such right as accrued to him by his previous residence and acquisition of property in this country. As a laundryman, he would, if he had not been previously admitted here, have been denied admission. The purpose of all legislation on this subject has been to exclude Chinese laborers. The petitioner is permitted to remain here, not because of but in spite of the fact that he is a laborer. He entered during his infancy lawfully on the status of his father. It is not claimed, of course, that his right to remain here depended upon his becoming a merchant after he attained his majority. Having rightfully entered, he was entitled to remain, although from choice or from necessity he may thereafter have become a

laborer. If he had become a merchant, he could, as his father did, have brought in a wife and children without running counter to the act of Congress prohibiting the coming in of laborers, because he could then have given his wife and minor children a status which would have entitled them to enter. It is one thing to say that a Chinese laborer found lawfully in this country may be permitted to remain and quite another to say that such a laborer may go back to China, marry a wife there, and, after the birth of two or three children, bring them all back and give them, in this country, his status as laborers. In the first case, the persons coming in are not embraced in the class of laborers, and hence neither the letter nor the spirit of the law is violated. In the latter, the persons coming in, having no status of their own, must take the status of the husband and father, and if he is a laborer, both the letter and the spirit of the law was violated.

CONCLUSION.

It is respectfully submitted that no warrant can be found for permitting a Chinese person domiciled in this country and having the status of a laborer to bring in his wife and minor children and that the judgment of the courts below denying the writ of habeas corpus should be affirmed.

WILLIAM L. FRIERSON,
Solicitor General.

FEBRUARY, 1921.

arrival at San Francisco from China, were being held for return. 258 Fed. Rep. 792. He must be regarded here as a Chinese person first permitted to enter the United States in 1901 as a resident merchant's minor son, but who subsequently acquired the status of laborer and as such entitled to remain.

In respect to the parties specially concerned the Circuit Court of Appeals said: "The father of Yee Won died in San Francisco in 1908. In the latter part of 1910 Yee Won applied to the immigration officers at the port of San Francisco for an identification of his status. He was about to depart for China, and it was his purpose to secure such an identification as would secure his admission upon his return. He made no claim that he was a merchant. His claim was that he was 'a capitalist and property owner.' He was granted such a certificate and departed for China in January, 1911. He returned on May 29, 1914. He was then 33 years of age. He claims to have married Chin Shee in China, March 2, 1911, and that a daughter, Yee Tuk Oy, was born to them November 28, 1912, and a son, Yee Yuk Hing, was born to them on November 2, 1913. These three are the present applicants to enter the United States. They were all born in China, and this is their first application to enter the United States."

The writ was properly denied unless as matter of law such a laborer may properly demand that his wife and minor children be permitted to come into this country and reside with him notwithstanding they were born in China and have never resided elsewhere. In support of such right *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, is cited, and it is said that the reasoning therein which permitted her to enter because a merchant's wife applies to the family of a Chinese laborer, who lawfully resides here. But that case turned upon the true meaning of § 6, Act of July 5, 1884, c. 220, 23 Stat. 115, which required

every Chinese person other than laborers as condition of admission to present a specified certificate. The conclusion was that the section should not be construed to exclude their wives, since this would obstruct the plain purpose of the Treaty of 1880 to permit merchants freely to come and go.

The Treaty of 1894, 28 Stat. 1210, provided that "the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited," but this "shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement." Exclusion of all Chinese laborers, with certain definite, carefully guarded exceptions, was the manifest end in view, and for a long time the same design has characterized legislation by Congress. "In the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof." See Act of May 6, 1882, c. 126, 22 Stat. 58; Act of July 5, 1884, c. 220, 23 Stat. 115; Act of September 13, 1888, c. 1015, 25 Stat. 476, 477; Act of May 5, 1892, c. 60, 27 Stat. 25; Act of November 3, 1893, c. 14, 28 Stat. 7.

The special object of the Treaty of 1894 was to secure assent of China to the limitation or suspension by the United States of immigration or residence of Chinese laborers. Prior to that time rather drastic legislation had undertaken to limit such immigration and residence. These statutes were "reënacted, extended, and continued, without modification, limitation, or condition" by Act of April 29, 1902, c. 641, 32 Stat. 176, as amended by Act of April 27, 1904, c. 1630, § 5, 33 Stat. 428, and are now in force notwithstanding the Treaty of 1894 expired in 1904. *Hong Wing* v. *United States*, 142 Fed. Rep. 128. This

YEE WON *v.* WHITE, AS COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 209. Submitted April 20, 1921.—Decided May 16, 1921.

A Chinese person who lawfully entered the United States as the minor son of a Chinese merchant, but whose status here became that of a laborer, *held* not entitled to bring in his wife and minor children, married and born during his temporary absence in China. P. 400. 268 Fed. Rep. 792, affirmed.

THE case is stated in the opinion.

Mr. M. Walton Hendry and *Mr. John L. McNab* for petitioner. *Mr. Joseph P. Fallon* was also on the brief.

The Solicitor General for respondent.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

The courts below denied petitioner's application for a writ of *habeas corpus* to secure release of his wife and minor children, who, having been denied admission upon their

well defined purpose of Congress would be impeded rather than facilitated by permitting entry of the wives and minor children of Chinamen who first came after the ratification of the treaty, as members of an exempt class, and later assumed the status of laborers. We think our statutes exclude all Chinese persons belonging to the class defined as laborers except those specifically and definitely exempted, and there is no such exemption of a resident laborer's wife and minor children.

The judgment of the court below is

Affirmed.

MR. JUSTICE CLARKE dissents.